HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL No.90 OF 2007

Between:

G. Bharathi Devi & others. .... Appellants

AND

The Hyderabad Urban Development Authority,
Rep. by its Vice Chairman,
Secunderabad & another. .....Respondents

:: J U D G M E N T ::

Counsel for the appellants : Shri S. Ramachandra Rao,
Senior Advocate
assisted by Shri Bobbili Srinivas

Counsel for the respondents : Shri T. Niranjan Reddy

31st January 2007

Per G.S.SINGHVI, C.J.

This is an appeal for setting aside order dated 4-8-2006 passed by the learned Single Judge, whereby he dismissed the writ petition filed by the appellants for issue of a mandamus to the respondents to hand over possession of the auctioned property measuring 2,130.37 square yards in Block No.1, 2,774.72 square yards in Block No.2, 1,722.24 square yards in Block No.6, 2,045.16 square yards in Block No.9, 2,045.16 square yards in Block No.8, 2,045.16 square yards in Block No.9, 2,045.16 square yards in Block No.10 of Nalagandla Residential Complex, Hyderabad.

A perusal of the record shows that the appellants participated in the auction conducted by the Hyderabad Urban Development Authority (for short, 'HUDA') on 28-2-2006. They gave highest bids for the plots in question. However, they did not deposit 1/4th of the bid money on the premise that the respondents have not provided the basic infrastructure and have not handed over possession despite repeated reminders. After some time, they filed writ petition under Article 226 of the Constitution of India for issue of a mandamus to the respondents to hand over possession of the plots to them. They pleaded that the action of the respondents in declining to hand over possession of the auctioned property is violative of their fundamental rights guaranteed under Articles 14, 19(1)(g) and 300-A of the Constitution.

The learned Single Judge did not call upon the respondents to file counter affidavit and dismissed the writ petition by observing that

even though HUDA is a statutory authority and a 'State' within the meaning of Article 12 of the Constitution, it is not within the province of the High Court to interpret the provisions of the non-statutory contract between the parties and the issues raised by the petitioners can be appropriately adjudicated by the civil court.

We have heard Sri S.Ramachandra Rao, Senior Advocate and Sri T. Niranjan Reddy, learned Advocate for the respondents and perused the record. In our opinion, the order under challenge is liable to be set aside because the view expressed by the learned Single Judge on the maintainability of the writ petition is not in consonance with the law laid down by the Supreme Court. In **Shrilekha Vidyarthi v. State of U.P.**[1], the Supreme Court considered the scope of judicial review in contractual matters and laid down the following propositions:

> "29. It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. (See **Ramana Dayaram, Shetty v. The International Airport Authority of India** (1979) 3 SCC 489 : (1979) 3 SCR 1014) and **Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir** (1980) 4 SCC 1 : (1980) 3 SCR 1338). In **Col. A. S. Sangwan v. Union of India** 1980 Supp SCC 559 : 1981 SCC L & S 378, while the discretion to change the policy in exercise of the executive power, when not trammelled by the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Article 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touch-stone, irrespective of the field of activity of the State, has long been settled. Later decisions of this Court have reinforced the foundation of this tenet and it would be sufficient to refer only to two recent

decisions of this Court for this purpose.

35. It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual on the field of contract has to be borne in the mind.

36. The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you'. This is what men in power must remember, always."

By applying the above noted propositions of law to the facts of this case, we hold that the issues raised by the appellants require detailed consideration and the learned Single Judge committed an error by non-suiting them at the threshold.

For the reason stated above, the appeal is allowed. The order of the learned Single Judge is set aside. The writ petition is admitted for

hearing. The respondents may file counter affidavit within two months. Thereafter, the case be listed for hearing and disposal on merits.

As a sequel to adjudication of the writ appeal in the manner indicated above, WAMP.No.152 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S.SINGHVI, C.J.

31st January, 2007

C.V. NAGARJUNA REDDY, J.

ARS

---

[1] AIR 1991 SC 537 = (1991) 1 SCC 212